

9-1-2012

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Recommended Citation

Gabriela Steier, *Womenomics for Nursing Growth: Making the Case for Work Time Flexibility and Mother-Friendlier Workplaces*, 21 Buff. J. Gender L. & Soc. Pol'y 119 (2012).

Available at: <https://digitalcommons.law.buffalo.edu/bjglsp/vol21/iss1/5>

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Womenomics¹ For Nursing Growth: Making The Case For Work Time Flexibility and Mother-Friendlier Workplaces

GABRIELA STEIER²

INTRODUCTION

Gender bias at work often coerces breastfeeding-working mothers to choose between their baby and their job. The forced choice between private and work life irreconcilably separates motherhood from a woman's career. Consequently, the separation of work and family life has negative impacts on both the mother and on her baby. These negative impacts also bear on public health and the economy on a large scale. The more unaccommodating workplaces are, the stricter the separation between work and family life is, the more permanent the choice a working mother has to make. Such unaccommodating workplaces thus force breastfeeding-working mothers to either wean their children too early or to opt-out. Increasing work-time flexibility for working parents, and especially breastfeeding mothers, would allow working mothers to breastfeed their

¹ The term "womenomics" was coined by CLAIRE SHIPMAN & KATTY KAY, *WOMENOMICS: WRITE YOUR OWN RULES FOR SUCCESS* xviii (2010); *Womenomics: Feminist management theorists are flirting with some dangerous arguments*, THE ECONOMIST, Jan. 2, 2010, at 48, available at <http://www.economist.com/node/15172746> [hereinafter *Womenomics*]; and *Women and the world economy: A guide to womenomics*, THE ECONOMIST, Apr. 15, 2006, at 73-74, available at <http://www.economist.com/node/6802551>.

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children for the recommended period of at least six months after birth.³ Arguably, if the compliance rates with this minimum required period of breastfeeding were higher, both the mother's and the baby's health would improve, which, in turn, would lead to a reduction in health care cost. Ultimately, these improvements would enhance public health in the long run and boost the economy through womenomics.⁴

Part I describes how the work-life conflict affects working mothers and particularly those who are breastfeeding their children. First, this section will explain the two-sphere conflict that prevents breastfeeding working mothers from reconciling work and family life. Second, Part I analyzes the gender bias at work that gives rise to: 1.) the Mommy Wage-Gap, and 2.) the Maternal Wall, which drive the two spheres (work and family) even further apart.⁵ Next, in the following two subsections, this article will illustrate how unaccommodating workplaces force women to either opt-out or wean their babies too early. Part II is an analysis of the consequences associated with the gender bias and work-life conflict described in Part I, and a description of the benefits that increased breastfeeding rates could provide for economic growth. Part III presents the current federal labor laws and their insufficiencies in protecting breastfeeding-working mothers from the gender bias and aggravated work-life conflict through a brief description of the Family and Medical Leave Act (FMLA) and the Patient Protection and Affordable Care Act

³ See *Nutrition: Exclusive breastfeeding*, WORLD HEALTH ORGANIZATION (WHO), http://www.who.int/nutrition/topics/exclusive_breastfeeding/en/ (last accessed Apr. 25, 2012).

⁴ Womenomics, for the purpose of this paper, is the economic effect of women in the market. It describes the approaches of businesses and companies to the increase in value and number of women in the workforce and the progressive work-life reconciliation of professional women.

⁵ Eugenia Caracciolo di Torella, *Is there a fundamental right to reconcile work and family life in the EU?* in *FAMILIES CARE-GIVING AND PAID WORK – CHALLENGING LABOR LAW IN THE 21ST CENTURY* 59 (Nicole Busby et al. eds., 2011) (citations omitted).

(PPACA).⁶ Finally, Part IV provides recommended solutions to the problems outlined in Part I, such as by increasing work-time flexibility through womenomics. Part IV also presents examples of how the European Union is implementing the work-life balance directives, and suggests how the U.S. could adopt similar business management strategies to increase breastfeeding rates with the ultimate goal to boost profitability.

PART I. NURSING PROFESSIONALS AND THE WORK-LIFE CONFLICT

A. The Conflict of Two Spheres

Generally, many employees find it difficult to strike a balance between professional and family life. This difficulty affects all persons in the workforce. Working parents often feel more pressure from this conflict because their children depend on them and require that the parents also factor their children's needs into their work-life equation. The resulting work-life conflict divides the lives of those employees who have little flexibility in their schedules into two spheres: the first sphere is the private and the second the public sphere. While the private sphere encompasses domestic and familial obligations, the public sphere is exclusively career-oriented.⁷ Often, these two spheres become irreconcilable, especially for breastfeeding-working mothers because their babies heavily depend on them.

When companies fail to provide their employees sufficient flexibility to reconcile the two spheres—with rigid and unforgiving work schedules—these companies harm their employees and ultimately reduce their productivity and profitability.⁸ If the workplaces are unaccommodating

⁶ Family and Medical Leave Act, 29 U.S.C. § 2601 (2009); Patient Protection and Affordable Care Act, 42 U.S.C. § 18001 (2010).

⁷ See ANN CRITTENDEN, *THE PRICE OF MOTHERHOOD: WHY THE MOST IMPORTANT JOB IN THE WORLD IS STILL THE LEAST VALUED* 48-53 (2001).

⁸ SHIPMAN & KAY, *supra* note 1, at 41-42.

and not family-friendly, it becomes extremely difficult for working parents to reconcile the two spheres, so they are often forced to choose one.⁹ Society often accepts these consequences where the family father is the breadwinner and the mother stays at home; this is the classic example of each parent choosing one of the two spheres because private and professional obligations clash and exert a large amount of pressure on working parents.¹⁰ They either renounce one of the spheres or engage in an uphill battle of reconciling the two. In the latter case, employees' productivity, efficiency, and work ethic may suffer under the pressure¹¹ and could detrimentally affect the companies, and on a large scale, the economic bottom-line.

The irreconcilability of the two spheres is especially troublesome for working mothers and, most of all, for those who are breastfeeding their newborns because of the unique relationship that only a nursing mother has with her baby.¹² Consequently, breastfeeding-working mothers are forced to either wean their baby too early¹³ or to leave their job, i.e. to opt-out.¹⁴ On a large scale, when women wean their babies too early, both the children and the mothers are more prone to disease and thus, early weaning has large-scale negative effects on public health and burdens the economy through high health care costs.¹⁵ However, when

⁹ See CRITTENDEN, *supra* note 7, at 5.

¹⁰ See JOAN C. WILLIAMS, *RESHAPING THE WORK-FAMILY DEBATE -- WHY MEN AND CLASS MATTER* 32 (2010).

¹¹ See generally SHIPMAN & KAY, *supra* note 1, at 34-35.

¹² See generally Karleen D. Gribble, *Mental health, attachment and breastfeeding: implications for adopted children and their mothers*, 1:5 INT'L BREASTFEEDING J., 1, 1-15 (2006) (discussion that breastfeeding supports the bonding between a mother and an adopted infant).

¹³ The recommended period to breastfeed is at least six months. See Michael B. Krawinkel, *Benefits from Longer Breastfeeding: Do We Need to Revise the Recommendations?*, 41 CURR. PROBL. PEDIATR. ADOLESC. HEALTH CARE, issue 9, 240, 240-43 (Oct. 2011); see also CRITTENDEN, *supra* note 7, at 259.

¹⁴ See generally CRITTENDEN, *supra* note 7, at 233-39.

¹⁵ Judith L. Gutowski, Marsha Walker & Ellen Chetwynd, *Containing Health Care Costs: Help in Plain Sight*, U.S. LACTATION CONSULTANT ASSOCIATION 4-6 (2010), available at http://www.hmhbga.org/Reimbursement_White_Paper.pdf.

breastfeeding-working mothers cannot reconcile the two-sphere clash, and want to avoid weaning their babies too early, they quit.¹⁶ In turn, when breastfeeding employees leave, the companies they worked for lose talent, experience, and professional expertise, and thus may become less productive and less profitable, which could detrimentally affect the economy on a large scale.¹⁷

Legislative action is needed to support and empower those working mothers who are unable to request flexible work schedules under the current laws. Working mothers have insufficient protection under current labor and employment laws and need legislative support for “flex-time” to accommodate these women’s bifurcated responsibilities as employees and mothers. *The American Journal of Public Health* summarizes this problem as follows:

Today, more than half of women in the United States with children less than a year old work outside the home. Yet, there is almost no evidence of employers accommodating lactating employees. The vast majority of working women who are breastfeeding their babies have no access at work to a private place to pump milk, a refrigerator to store milk, or breastfeeding breaks to nurse a nearby infant. Absent prolonged, paid maternity leave, on-site day care, accommodations at work, and flexible work hours, working women will continue to find breastfeeding difficult.¹⁸

¹⁶ See Lisa Belkin, *The Opt-Out Revolution*, N. Y. TIMES (Oct. 26, 2003), <http://www.nytimes.com/2003/10/26/magazine/26WOMEN.html?pagewanted=all> (for a discussion on women leaving the workplace).

¹⁷ Over 90 percent of women in the workforce are affected/use flexible work arrangements (FWA's), which amounts to about 10 million jobs in the U.S. that could or will be lost if employers cannot be flexible to working mothers. See Mary Shapiro, Cynthia Ingols & Stacy Blake-Beard, *Optioning In versus "Opting Out": Women Using Flexible Work Arrangements for Career Success*, CENTER FOR GENDER IN ORGANIZATIONS (CGO), Simmons School of Management, Briefing Note Number 25, 3 (Jan. 2007), http://www.simmons.edu/som/docs/insights_25.pdf.

¹⁸ Jacqueline H. Wolf, *Low Breastfeeding Rates and Public Health in the United States*, 93(12) AM J PUBLIC HEALTH 2000, 2008 (Dec. 2003) (citing Laura

Such inflexible structures of “all-or-nothing” workplaces¹⁹ force women to choose between career and family. These inflexible workplaces are unaccommodating to the needs of working mothers and are especially important factors pushing working mothers with babies out of their jobs. What women want is “freedom, time, [and] control”²⁰ for work-life balance through flexible work schedules and family-friendly workplaces.²¹ However, when gender bias is a part of their workplace’s office culture, women will rarely be able to find a proper work-life balance.

B. Gender Bias at Work: The Mommy Wage-Gap and the Maternal Wall

Many employed mothers, especially those who need to breastfeed their babies three or four times a day, need the flexibility of part-time work. Part-time work pays less, and these women become victims of the: “Mommy Wage-Gap” and, more often than not, the “Maternal Wall” at the same time.²² For working mothers, reconciling the two spheres is very difficult because they have to balance their parental obligations against their professional ones, with the addition of frequently being subject to gender bias at their workplaces.²³ Unfortunately, and despite all modern emancipation, “women’s careers are seen as deviations from the unsustainable ‘work is primary’ model”²⁴ in many professions. Surveys clearly show that “[o]f all the triggers

Duberstein Lindberg, Trends in the Relationship Between Breastfeeding and Postpartum Employment in the United States, 43 SOC. BIOLOGY 191 (1996)).

¹⁹ WILLIAMS, *supra* note 10, at 3, 30-31, 33.

²⁰ SHIPMAN & KAY, *supra* note 1, at 23.

²¹ Workplaces, for the purpose of this paper, are broadly defined as any office, company, firm, or business, including medical practices, hospitals, schools, and universities, where women work.

²² See CRITTENDEN, *supra* note 7, at 5, 87-88, 93-95; WILLIAMS, *supra* note 10, at 92-93 (This article coins the term “Mommy Wage-Gap” based on the ideas set forth by Williams and Crittenden).

²³ CRITTENDEN, *supra* note 7, at 87-88, 96-97.

²⁴ Shapiro et al., *supra* note 17, at 1.

of stereotyping in today's workplace, motherhood triggers the strongest bias."²⁵ Consequently, working mothers, especially those who are breastfeeding, are promoted less, earn less, and receive less respect than their male colleagues doing the same jobs.²⁶ The two resulting forms of discrimination against mothers that emerge from this gender bias at work are called, depending on the situation, the Mommy Wage-Gap, and/or the Maternal Wall.²⁷

The Maternal Wall is the abstract limitation in career opportunities that a women faces in her professional life upon becoming a mother.²⁸ Joan C. Williams, Distinguished Professor of Law, UC Hastings Foundation Chair, Founding Director of the Center for Work Life Law at the University of California, Hastings College of the Law, writes that "[t]he [M]aternal [W]all reflects the continuing hold of separate-spheres imagery that mothers belong in a domestic sphere set apart from the world of work Separate-spheres imagery of selfless motherhood continues to structure social intuitions in ways that systematically disadvantage women at work."²⁹ Thus, employers and supervisors who believe in the two-sphere structure of women's lives fail to acknowledge the true female talent of working mothers.

Gender bias is also the underlying reason for much of the prejudice that creates this Mommy Wage-Gap and makes reconciling the two spheres unnecessarily difficult. The Gender Wage-Gap is the wage differentials between "equally productive males and females" in the U.S.³⁰ More specifically, the Mommy Wage-Gap, for the purpose of this paper, is the difference in a mother's earnings as compared to the earnings of childless women or men doing the same

²⁵ WILLIAMS, *supra* note 10, at 92.

²⁶ *Id.* at 28-29.

²⁷ CRITTENDEN, *supra* note 7, at 98-99.

²⁸ WILLIAMS, *supra* note 10, at 92-93 (citations omitted).

²⁹ *Id.* at 93.

³⁰ See Doris Weichselbaumer & Rudolf Winter-Ebmer, *A Meta-Analysis of the International Gender Wage Gap*, in 19 JOURNAL OF ECONOMIC SURVEYS 479, 479 (2005).

job.³¹ Williams explains that “[s]ociological studies show that motherhood accounts for an increasing proportion of the wage gap between men and women.”³² Williams also notes that “[t]he cost of motherhood is particularly steep for fast-track women [b]ut quitting work to look after the children can mean financial disaster.”³³ Furthermore, if the mother in a two-income family quits her job to look after small children, significant financial problems may arise. Accordingly, women bow to the financial drive behind the separation of the two spheres and consequently earn less.

“F[ull]-[time] working women in America earned only 82.2% of men's median weekly earnings last year [2011], according to . . . the Institute for Women's Policy Research, a think-tank in Washington, D. C.”³⁴ Moreover, “[h]ighly trained mothers are 59 [percent] less likely to work fifty-plus hours a week than are their colleagues without children. Indeed, only 5 percent of mothers aged 24 to 44 work fifty or more hours a week.”³⁵ In the case of pregnant or breastfeeding employees, the Mommy Wage-Gap is probably even more drastic and rampant. Thus, the Mommy Wage-Gap results as an unfair and unfounded penalty for professional women who are mothers.

On the other hand is part-time work, a compromise which many mothers of young children choose in an effort to bridge the gap between their responsibilities as a mother and as an employee. However, this also means a large pay-gap between employees working full-time and part-time. Williams notes that “the wage penalty for part-time work is

³¹ *Id.* at 506.

³² Joan C. Williams & Nancy Segal, *Beyond the Maternal Wall: Relief for Family Caregivers Who Are Discriminated Against on the Job*, 26 HARV. WOMEN'S L. J. 77, 77 (2003).

³³ *Female Power*, THE ECONOMIST, Jan. 2, 2010, at 50, available at <http://www.economist.com/node/15174418>.

³⁴ *America's gender wage gap*, THE ECONOMIST ONLINE (Apr. 17, 2012, 5:52 PM), <http://www.economist.com/blogs/graphicdetail/2012/04/focus-3>.

³⁵ WILLIAMS, *supra* note 10, at 31.

a whopping 21 [percent] per hour worked.”³⁶ Nonetheless, more and more women choose this route because the pressures from the two spheres are too big or irreconcilable and their work times are inflexible.³⁷ Thus, mothers of young children rarely get a fair deal when they work part-time, even though a 2007 survey showed that 60 percent of working mothers would prefer part-time work, largely so they can accommodate being available for their children’s schedules.³⁸ One of the driving forces behind breastfeeding-working mothers’ requirements for part-time work is the virtual impossibility to reconcile their parental obligations and professional duties because their workplaces are unaccommodating to their unique and essential needs. According to broadcasters’ Claire Shipman, at ABC News’ Good Morning America, and Katty Kay, at BBC World News America, the analysis of empirical data shows: that women generally want more flexibility and half of all working women want to work fewer hours, half of all working women would change their schedules if they had the opportunity, more than half would trade money for a day off, and three quarters of all working women want flexible work options.³⁹ As a result of gender bias, these women cannot afford to request the flexibility they need and want.

C. Unaccommodating Workplaces Force Women to Wean Too Early

The lack of flexibility at work and the extraordinary circumstances of breastfeeding mothers are often irreconcilable and many women find their workplaces unaccommodating upon their return from maternity leave. As a result of such unforgiving workplaces and schedules, many breastfeeding-working mothers wean their babies too

³⁶ *Id.* at 45.

³⁷ *See id.* at 46.

³⁸ *See SHIPMAN & KAY, supra* note 1, at 29.

³⁹ *Id.* at 34.

early. Working outside the home is a logical barrier to women's abilities to breastfeed because they cannot bring their babies to work or take regular lactation breaks. A study⁴⁰ published in *Pediatrics* in 2008 revealed how working mothers who are breastfeeding their children adapt to the workplace upon returning to work after a short three-month maternity leave, showing that: 31.8 percent of working breastfeeding employees keep their child at work during the work day to breastfeed, only 7.9 percent of nursing employees go to their child, but 52.7 percent pump and save milk during the work day, and 15.9 percent wean their babies as soon as they return to work.⁴¹ About one third of workplaces are supportive of pregnant employees and about half of workplaces show support for employees in need of postnatal care.⁴² These numbers could change for the better if working-breastfeeding mothers had more flexible work schedules and if workplaces were more accommodating. Currently, many workplaces are unforgiving to the needs of breastfeeding-working mothers, and, as a result, many of these mothers likely have to wean their babies before the WHO's⁴³ recommended minimum period of six months. If workplaces were more accommodating to the needs of breastfeeding mothers, however, women would not need to wean their babies as soon as they return to work.

Real mothers of infants who try to reconcile their professional and maternal obligations face insurmountable challenges every day in their lives. In an interview, Dr. M., a third-year neurology resident in Boston and the mother of a baby girl, explained:

⁴⁰ Sara B. Fein, Bidisha Mandal, & Brian E. Roe, *Success of Strategies for Combining Employment and Breastfeeding*, 122 *PEDIATRICS* S56 (2008).

⁴¹ *Id.* at S58.

⁴² *Id.*

⁴³ CRITTENDEN, *supra* note 7, at 258-59; See *Nutrition: Exclusive breastfeeding*, *supra* note 3.

Residents start work early in the morning, are expected to work or attend conferences during lunch and then stay as long as is necessary to get work done. There is no redundancy in the system, so if I cannot work for some reason, someone else must cover that call, which worsens their lives, and so people show up to work even with fevers, much less for family reasons. . . . I don't think that residency is people friendly, much less family friendly.

So, when I had baby I had really good intentions of breast feeding her as the AAP [American Association of Pediatrics] recommends, but it quickly became apparent that I would not have that kind of opportunity. I carry a stroke pager, which means that I have to be in the ER [Emergency Room] within 5 minutes of it going off. Also, I am responsible for consultations to the ED [Emergency Department], some inpatient consults, etc. All of this leads to stress and no time for pumping. And in-house call means I don't have even all my nights at home to see my baby and breastfeed her. So, my baby eats a lot of formula, as do babies of most people who have babies in residency, AAP guidelines and good intentions be damned. Furthermore, each hospital has 1 room dedicated to pumping, typically with a single chair and no screens/curtains, so only one person can use it at a time. . . . so inevitably, [pumping] became either impossible or an ordeal. . . . [I]n medicine, as I imagine in many industries, balancing work and family is very tough, particularly during training, which nowadays lasts longer and longer I think work-life balance is always a challenge at any stage.⁴⁴

What Dr. D. describes alludes to is the most recent empirical evidence and the core argument of this paper: workplaces should accommodate working-breastfeeding mothers through work-time flexibility in order to allow these women to breastfeed their babies for the recommended time, in order to achieve optimal health for their babies and themselves. Part II discusses, in-depth,

⁴⁴ E-mail Interview with Dr. M. (Mar. 11, 2012) (on file with author).

the benefits of breastfeeding for the recommended⁴⁵ six-month period.

The reason many women do not request more flexible schedules is because "most women don't think they get enough support for flexibility where they work and worry that if they do work flexibly it will make them appear less committed"⁴⁶ and thereby jeopardize their chances to climb the career ladder. This is a form of discrimination that remains largely unaddressed by the legislature. Proof for this injustice is the opt-out revolution.⁴⁷

D. Opting-Out is Not an Option

Opting-out⁴⁸ describes the allegedly voluntary choice a working mother makes to quit her career upon the birth of a child to devote her time to child rearing.⁴⁹ Although opting-out seems like a voluntary and welcome choice, this assumption is inherently untrue. According to Williams, one of the driving factors for this increasing trend is the "powerful gender bias that depicts working mothers as neither committed nor competent."⁵⁰ Said another way, employers and co-workers consider these working mothers conflicted employees and assume that they are more loyal to their family responsibilities than work.⁵¹ This means women with professional and familial responsibilities simultaneously face the most severe gender bias from their workplace peers; and those women who still have to take time to breastfeed their children likely suffer most. These assumptions are unwarranted and are merely a result of stereotypes. Williams explains that the male-breadwinner

⁴⁵ See *Nutrition: Exclusive breastfeeding*, *supra* note 3.

⁴⁶ SHIPMAN & KAY, *supra* note 1, at 29.

⁴⁷ See Belkin, *supra* note 16.

⁴⁸ *Id.*

⁴⁹ See CRITTENDEN, *supra* note 7; see also WILLIAMS, *supra* note 10, at 3-4, 12-14, 23, 30.

⁵⁰ WILLIAMS, *supra* note 10, at 3.

⁵¹ Based on the ideas set forth in WILLIAMS, *supra* note 10, at 3.

stereotype has also pushed women into opting-out because workplaces modeled for male breadwinners are so inflexible and hard to change.⁵² As a result, the employers and co-workers marginalize these women and they opt-out. For the majority of breastfeeding employees, better work-time flexibility and extended maternity leave are only wishful thinking, so they “opt-out” if they do not want to wean their babies too early.

In an interview discussing the dilemma women face in trying to reconcile the work and family spheres, Cynthia Thomas Calvert, a work-life expert, Senior Advisor for Family Responsibilities Discrimination at the WorkLife Law Center of the University of California, Hastings College of the Law, explains that,

public education (and thus also media campaigns) about . . . [are] critical to making any change that will improve workplaces for breastfeeding moms. [Many lawsuits] in the workplace sprin[g] from negative stereotypes about mothers, and those stereotypes discourage employers from wanting mothers as employees. That can translate into attempts to force mothers to quit – and what better way than to put them between a rock and a hard place, having to decide between putting food on the table for the rest of the family and putting the healthiest food in her baby’s stomach?⁵³

Further, a study published in the *International Journal of Nursing Studies* revealed that the sooner women return to work after childbirth, the sooner they wean their babies.

The overall prevalence of initial breastfeeding was 83.7%. Postpartum women returning to work less than or equal to 1 month had the lowest initiation of breastfeeding rate (77.5%), but had a higher prevalence

⁵² *Id.* at 32.

⁵³ E-mail Interview with Cynthia Calvert, Senior Advisor for Family Responsibilities Discrimination at the WorkLife Law Center of the University of California, Hastings College of Law (March 11, 2012) (on file with author); see also WORKFORCE 21, <http://www.ctcalvert.com/about.html> (last visited March 11, 2012) and <http://www.workforce21c.com/about.html>.

of breastfeeding duration less than or equal to 1 month (34.9%) than the overall population (26.8%). Overall 67.9%, 39.4%, 25.4%, and 12.7% mothers who started breastfeeding still breastfed their infants at the age of 1, 3, 6 and 12 months, respectively. Women with maternal leave of less than or equal to 6 months ceased breastfeeding earlier than those with maternal leave beyond 6 months and those who did not return to work up to 18 months after birth. . . . Mothers returning to work within 1 year after giving birth were significantly earlier in weaning than those without return to work.⁵⁴

The less flexible or the more rigid the workplaces, the more likely it is that women will wean their babies early upon returning to work after maternity leave, as Dr. M.'s example showed.⁵⁵ It follows that adapting workplaces to breastfeeding employees' need to breastfeed could impact these numbers and raise breastfeeding rates to the recommended levels and durations during the first year of life of newborns in the United States.

Increased work-time flexibility for working mothers of children under the age of one is vital for their health and wellbeing and could have wide-reaching effects on public health and the economy as a whole. Women should not be forced to opt-out because their schedules are not flexible enough or to wean their babies too early. When women opt-out, they affect the turnover rates⁵⁶ of the companies they work for, therefore likely reducing its assets by increasing its costs, thereby affecting balance sheets in several negative ways and decreasing profitability. The two aforementioned alternatives have likely lead to an ever-greater shortage of skilled workers and have potentially helped drain the economy. Conversely, when working-breastfeeding mothers wean their babies too early, there is

⁵⁴ Chao-Hua Chuang et al., *Maternal return to work and breastfeeding: A population-based cohort study*, 47 INTERNATIONAL JOURNAL OF NURSING STUDIES 461, 461 (April 2010), available at <http://www.sciencedirect.com/science/article/pii/S0020748909003101>.

⁵⁵ Interview with Dr. M., *supra* note 44.

⁵⁶ See SHIPMAN & KAY, *supra* note 1, at 17 (citations omitted).

likely a negative effect on public health, and implicitly also the economy, as the following section explains.

PART II. HOW BREASTFEEDING AFFECTS THE ECONOMY AND PUBLIC HEALTH

This part discusses the potential benefits of breastfeeding for public health and the economy, and lays the groundwork for the discussion of the insufficiencies of current labor laws, explained in Part III. Labor and employment law, workplace practices, and individual employers' policies greatly affect the breastfeeding rates and duration in the U.S. because all of these factors control how working mothers schedule their time with and away from their infant. The restrictions breastfeeding-working women face when they return to work after maternity leave could impact their health as well as that of their babies. Therefore, breastfeeding is an important public health issue and the legislature should address it proactively.

A. *Increased Breastfeeding Rates' Benefits for Public Health*

The advantages of breastfeeding specifically include health and developmental benefits and disease prevention for the baby.⁵⁷ Studies have shown that “[c]hildren who were breastfed during infancy suffer less recurrent wheezing, have a higher IQ, and develop insulin-dependent diabetes mellitus less frequently than those who are fed formula.”⁵⁸ Additionally, breastfeeding decreases a child's relative risk of mortality from 1.5 to 5.⁵⁹ Babies who were breastfed also “have lower rates of gastrointestinal

⁵⁷ Thomas M. Ball & David M. Bennett, *The Economic Impact of Breastfeeding*, 48 PEDIATRIC CLINICS OF NORTH AMERICA 253-62 (Feb. 2001), available at <http://www.sciencedirect.com/science/article/pii/S00313955-05702984> (citations omitted).

⁵⁸ *Id.*

⁵⁹ See Jody Heymann, Allison Earle & Jeffrey Hayes, *The Work, Family, and Equity Index: How Does the United States Measure Up?* THE PROJECT ON WORKING GLOBAL FAMILIES, 1, 7 (2007), available at <http://www.mcgill.ca/files/ihsp/WFEI2007.pdf>.

infections, respiratory tract infections, meningitis, and other infections” in comparison to formula-fed children.⁶⁰ Thus, breastfeeding boosts children’s health⁶¹ and, logically, decreases health care costs. On the other hand, “fewer breastfeeding mothers develop ovarian cancer and bone demineralization than do women who do not breastfeed their infants.”⁶² Therefore, evidence shows that breastfeeding promotes better health in mothers and infants.

Despite various campaigns to promote longer breastfeeding periods, mothers and babies have still been facing decreased periods of breastfeeding in the United States (less than six months).⁶³ Said another way, even though the U.S. has experienced a recent increase in the number, or “rate,” of women breastfeeding, the overall duration of breastfeeding remains low.⁶⁴ Although, “[t]he general recommendation is to breastfeed newborn babies for 6 months exclusively and then to introduce complementary

⁶⁰ *Id.*

⁶¹ In particular, the reason why breastfeeding boosts children’s health is because the immunoglobulin IgA is primarily passed to the baby via the colostrum, the mother’s milk, and it plays a vital role in a host of immune responses. Babies who do not receive IgA through the colostrum consequently have a lower immune system and are more prone to disease. Hence, breast milk is the most complete and healthy food for babies during their first year of life. RICHARD COICO, GEOFFREY SUNSHINE & ELI BENJAMIN, *IMMUNOLOGY: A SHORT COURSE* 54, 264 (5th. Ed., Wiley 2003); DIANE WIESSINGER ET AL., *THE WOMANLY ART OF BREASTFEEDING*, LaLeche League International 348-49 (1995). In summary, “[b]reast milk contains a wide variety of defense factors, i.e., immunoglobulins, leukocytes, hormones, cytokines, and complex oligosaccharides in free form or bound to macromolecules.” Maria Jansson, *Feeding children and protecting women: The emergence of breastfeeding as an international concern*, 32 *WOMEN’S STUDIES INTERNATIONAL FORUM* 240, 240 (2009).

⁶² Ball & Bennett, *supra* note 57, at 2 (citations omitted).

⁶³ CRITTENDEN, *surpa* note 7, at 258-59.

⁶⁴ Wolf, *supra* note 18, at 2004-05; see also Anne L. Wright & Richard J. Schanler, *The Resurgence of Breastfeeding at the End of the Second Millennium*, *THE JOURNAL OF NUTRITION* (2001 copyright by The American Society for Nutritional Sciences), <http://jn.nutrition.org/-content/131/2/421S.long>.

foods and continue breastfeeding,”⁶⁵ this is barely possible because most mothers only have twelve weeks of maternity leave, and face several obstacles to breastfeeding upon returning to work. For all of breastfeeding’s health benefits to both the mother and the child, several international, as well as national organizations, have issued recommendations for the ideal periods to breastfeed for their children’s optimal health.⁶⁶ For example, “[t]he American Academy of Pediatrics has published breastfeeding guidelines, encouraging new mothers to nurse their babies for at least twelve months and recommending that pediatricians encourage employers to support continued lactation in the workplace[.]”⁶⁷ Nonetheless, breastfeeding duration remains low, in part due to inflexible work schedules and unaccommodating workplaces that force breastfeeding working mothers to wean their babies too early.⁶⁸

Even the United States government has invested in campaigns to promote breastfeeding, thereby acknowledging how important it is to nurse babies until they are strong enough to grow into healthy adults: “Among the goals of Healthy People 2010 are an increase in breastfeeding initiation to 75 percent of all newborn babies and an increase of babies breastfeeding at 6 months to 50 percent[.]”⁶⁹ As a reaction to these recommendations, “[s]tate and federal legislation has been introduced

⁶⁵ Michael B. Krawinkel, *Benefits from Longer Breastfeeding: Do We Need to Revise the Recommendations?*, 41 CURR. PROBL. PEDIATRIC ADOLESCENT HEALTH CARE 240, 240 (Sept. 19, 2011).

⁶⁶ Courtney Lane, *The Beneficial Health and Financial Implications of the Patient Protection and Affordable Act for Pregnant Women, New Mothers, and Infants*, 20 ANNALS HEALTH L. ADVANCE DIRECTIVE 167, 171 (2010) (citations omitted).

⁶⁷ Naomi Bromberg Bar-Yam, *Nursing Mothers at Work: Corporate and Maternal Strategies to Support Lactation in the Workplace*, 6(2) JOURNAL OF THE MOTHERHOOD INITIATIVE FOR RESEARCH AND COMMUNITY INVOLVEMENT 127, 127 (2004) (citations omitted).

⁶⁸ CRITTENDEN, *supra* note 7, at 258-59.

⁶⁹ *Id.*

protecting mothers' right to breastfeed at work and offering companies [a] tax incentive to establish lactation support programs[]."⁷⁰ Unfortunately, these programs and campaigns remain ineffective as long as maternity leave provisions and work time schedules prevent mothers from taking the time needed to breastfeed their children. Therefore, better legislation is needed to allow women to breastfeed their children for the recommended time and to reconcile the two-spheres.

Flexibility trumps recession "by allowing employers to stay open longer hours with the same number of employees; by improving staffing during vacations, illness, and emergencies; and by decreasing 'presenteeism,'"⁷¹ and minimizing unproductive but paid hours. Additionally, "[b]usinesses that offer flexibility may enhance productivity."⁷² It could also reduce overhead costs because "[f]lexibility also permits better staffing during vacations, illnesses, and emergencies,"⁷³ decreasing overhead costs by having people work in shifts. While working mothers may prefer to cover morning shifts because their children are at day care or at school, childless employees may prefer to work afternoons and early evenings. Employers could thus apportion tasks accordingly. It is all a matter of organization (maybe a woman can even help set this up). The way women juggle their lists, as the movie "I Don't Know How She Does It" with Sarah Jessica Parker⁷⁴ beautifully illustrates how a woman can manage her workplace and home schedules. Using the metaphor of juggling balls in the air to equal profits, one may quickly understand that it is not a matter of catching the balls, but a matter of keeping as many in the air as possible to

⁷⁰ *Id.*

⁷¹ WILLIAMS, *supra* note 10, at 68.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *I Don't Know How She Does It* (The Weinstein Comp. 2011). For more information, please visit <http://www.howshedoesitmovie.com>.

generate profits. It is once again a matter of adapting to the wind direction to keep as many balls in the air as womanly possible. All of these attributes support the business case for women:

The major elements of the business case are improved consumer and workplace safety; stronger employee loyalty and commitment, which has a direct link to profits; enhanced productivity; reduced stress, which drives down health insurance and other costs; direct and indirect cost savings due to enhanced recruitment and decreases in turnover and absenteeism; and avoidance of a loss of employer control in unionized workplaces.⁷⁵

If more businesses and companies adapted its workplaces to women's needs, and more specifically, to those of mothers, and especially breastfeeding mothers, these businesses and companies may ultimately boost their profitability and reap the benefits of mother-friendlier workplaces.

B. Boosting Corporate Profitability through Increased Breastfeeding Rates

For some mothers, breastfeeding availability could directly correlate with the mother's professional productivity, and thus could help lead to an implicit boost in the economy by saving money and increasing spending. Breastfeeding has various public health benefits mentioned in Part A above, and increased breastfeeding rates could result in significant savings in health care costs. A study by Michael Baker and Kevin Milligan on maternal employment showed that "the labor market policy may prove an effective way of achieving breastfeeding goals" to save both lives and money.⁷⁶ The Center for Disease Control, for example, found that "if ninety percent of women breastfed for six

⁷⁵ WILLIAMS, *supra* note 10, at 66.

⁷⁶ Michael Baker & Kevin S. Milligan, *Maternal employment, breastfeeding, and health: Evidence from maternity leave mandates* (National Bureau of Economic Research, Inc. Working Papers 13188, 2007), 24 HEALTH ECONOMICS, issue 4, 871, 884 (July 2008), available at <http://www.nber.org/papers/w13188>.

months, this would save the United States approximately 13 billion dollars in medical costs as well as prevent 911 deaths per year.”⁷⁷ More importantly,

[t]he Economic Research Service of USDA recently estimated a minimum savings of \$3.1 billion if breastfeeding rates increased from the 1998 rates to those recommended by the US Surgeon General This analysis likely underestimates the total savings because it represents cost savings from the treatment of only three childhood illnesses—otitis media, gastroenteritis, and necrotizing enterocolitis. . . . In addition to the savings in direct medical costs, data are emerging that document the economic benefits of breastfeeding support to employers, including lower maternal absenteeism due to infant illness, increased employee loyalty, improved productivity, and enhanced public image.⁷⁸

These reports support the premise that longer maternity leave and more work-time flexibility would give lactating mothers a chance to breastfeed their babies longer and to boost the health of both mother and child. It is economically illogical not to adapt workplaces to the needs of working mothers, and especially to breastfeeding-working mothers, because the data proves that such adaptations would likely increase profitability.

Again, implementing legislation to support and accommodate working-breastfeeding mothers to allow them to breastfeed their children for the recommended six months⁷⁹ could boost public health and save 13 billion dollars in health care costs.⁸⁰ Further, a publication by the

⁷⁷ Lane, *supra* note 66, at 172 (citing Nicholas Bakalar, *Despite Advice, Many Fail to Breast-Feed*, N.Y. TIMES, Apr. 19, 2010, at D7).

⁷⁸ Brenda Dobson & Maureen A. Murtaugh, *Position of the American Dietetic Association: Breaking the Barriers to Breastfeeding*, 101 JOURNAL OF THE AMERICAN DIETETIC ASSOCIATION, 1213, 1216 (Oct. 2001), available at <http://www.sciencedirect.com/science/article/pii/S000282230100298X> (citations omitted).

⁷⁹ See *Nutrition: Exclusive breastfeeding*, *supra* note 3.

⁸⁰ Lane, *supra* note 66, at 173.

Beazley Institute for Health Law and Policy at the Loyola University Chicago School of Law explains that such legislation would also permit “a mother the ability to achieve both professional and maternal goals, thereby becoming more productive members of society and potentially saving the nation even more money in unemployment, welfare, and Medicaid costs that would otherwise be spent on unemployed mothers and their children.”⁸¹ Such laws and policies would thereby reserve funds for the economic reinvestment through womenomics. However, current federal labor and employment laws create unnecessary obstacles to these increases in productivity.

PART III. REALITY CHECK - TODAY’S LAWS ARE NOT ACCOMMODATING

A. *The FMLA’s Insufficiency*

Under the family-care provisions⁸² of the Family and Medical Leave Act (FMLA), parents have the right to take twelve weeks of unpaid bonding leave upon the birth of a child.⁸³ Therefore, maternity leave is limited to three months under federal law.⁸⁴ However, three months of maternity leave is half of the minimum recommended time mothers are instructed to breastfeed their infants for optimal health.⁸⁵ Thus, women’s compliance with these

⁸¹ *Id.*

⁸² *Coleman v. Ct. of Apps. of Md.*, 132 S. Ct. 1327, 1336 (2012) (The Supreme Court of the United States “considered subparagraph (C) in *Nevada Dept. of Human Resources v. Hibbs*, 538 U.S. 721 (2003). Subparagraph (C), like (A) and (B), grants leave for reasons related to family care, and those three provisions are referred to . . . as the family-care provisions.” *Id.* at 1332).

⁸³ Family and Medical Leave Act, 29 U.S.C. § 2612(a) (2009).

⁸⁴ *Id.*

⁸⁵ Ideally, women should breastfeed their infants exclusively for six months “and then partially breastfed for another six months as first foods are introduced.” Heather M. Kolinsky, *Respecting Working Mothers with Infant Children: The Need for Increased Federal Intervention to Develop, Protect, and Support A Breastfeeding Culture in the United States*, 17 DUKE J. GENDER L. & POLY 333, 335 (2010).

recommendations are at odds with their need to return to work⁸⁶ because “few working women in the United States are able to take even six months away from work.”⁸⁷ These unreasonable limitations make it difficult for women with small children to reconcile the private and public spheres.⁸⁸ Notably, Congress even acknowledges this dilemma but fails to address it proactively:

Congress finds that . . . the lack of employment policies to accommodate working parents can force individuals to choose between job security and parenting; . . . [and] due to the nature of the roles of men and women in our society, the primary responsibility for family caretaking often falls on women, and such responsibility affects the working lives of women more than it affects the working lives of men. . . [and] the Equal Protection Clause of the Fourteenth Amendment, minimizes the potential for employment discrimination on the basis of sex by ensuring generally that leave is available for eligible medical reasons (including maternity-related disability) and for compelling family reasons, on a gender-neutral basis.⁸⁹

The FMLA allots too little time for women to breastfeed and fails to instruct employers to allow for greater work-time flexibility, so that women who are nursing their babies may in fact schedule time to do so. One of the true reasons behind such oversight may be gender biased workplaces and labor practices.

⁸⁶ Chuang et al., *supra* note 54, at 462, 468-69.

⁸⁷ Kolinsky, *supra* note 85, at 335 (“Federal legislation, specifically the Family Medical Leave Act, provides for twelve weeks of unpaid leave under certain conditions. . . . Beyond that most women are at the mercy of state and private employers' leave policies.” *Id.* at 335 n.13).

⁸⁸ Linda K. Kerber, *Toward an Intellectual History of Women: Essays*, CHAPEL HILL: UNIV. OF N.C. PRESS 159 (1997) available at http://faculty.uml.edu/sgallagher/separate_spheres.htm.

⁸⁹ 29 U.S.C. § 2601(a)(3), (a)(5), (b)(4) (2012).

B. The PPACA's Insufficiency

The Patient Protection and Affordable Care Act (PPACA)⁹⁰ of 2010 was passed under the nickname "Obamacare" as part of President Barack Obama's Health Care and Education Reconciliation Act.⁹¹ The PPACA expands the rights of breastfeeding employees under the Fair Labor Standards Act⁹² with the following provision:

An employer shall provide—

(A) a reasonable break time for an employee to express breast milk for her nursing child for 1 year after the child's birth each time such employee has need to express the milk; and

(B) a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.⁹³

However, employers with fewer than 50 employees are not subject to this provision.⁹⁴ The 2010 article published by the Beazley Institute for Health Law and Policy at the Loyola University Chicago School of Law, referred to previously, predicts that "[t]he three essential requirements of this provision are time, space and support, which can be afforded in a variety of ways, from basic to comprehensive breastfeeding support systems. Consequently, businesses will not expend significant costs to provide accommodations."⁹⁵ The PPACA, in its current form, is insufficient to accomplish the goal outlined in this paper, and could even have the adverse effect on mothers, their

⁹⁰ Patient Protection and Affordable Care Act, 42 U.S.C. § 18001 (2010).

⁹¹ Health Care and Education Reconciliation Act of 2010 42 U.S.C. § 1305 (2010).

⁹² Fair Labor Standards Act, 29 U.S.C. Ch. 8.

⁹³ 29 U.S.C. § 207(r)(1) (2010).

⁹⁴ 29 U.S.C. § 207(r)(3).

⁹⁵ Lane, *supra* note 66, at 173 (citations omitted).

babies, employers, the economy, and society at large because:

[E]mployers can ultimately benefit financially, as many mothers will return to work more quickly and take less time off because both she and her infant will be healthier . . . [and] because mothers will be more satisfied with their work environment and with personal achievement goals as mothers, the transition back to work is easier, which could result in an increase in productivity, and extended periods of employment.⁹⁶

Thus, the PPACA could turn out to be a loophole to achieve greater profitability without really helping breastfeeding-working employees in the long run. In sum, working-breastfeeding mothers, and all working mothers generally, need better legislative support in their struggle to balance work and family life.

PART IV. INCREASED WORK-TIME FLEXIBILITY AND WOMENOMICS

All of the above-mentioned points converge in the conclusion that improved work-time flexibility⁹⁷ will not only allow working mothers to breastfeed their children, but

⁹⁶ *Id.*

⁹⁷ [M]ost definitions [of flexibility] include a few key components: 1. Flexible work arrangements, including the ability to work part-time or part-year, to take phased retirement, to work a compressed work week (like the four-day, forty-hour week), to telecommute, or to schedule working hours that are not the standard times that most employees work; 2. Paid and unpaid leaves for different lengths of time to deal with family, medical, and personal issues, including sick leave and short-term disability leaves, family leave to care for a newborn or sick family member, or time off to attend parent-teacher conferences and the like; and 3. Career maintenance and re-entry (sometimes known as “off-ramps and on-ramps”), including moving from full-time to part-time work and vice versa, re-training for employees re-entering the workforce, and related mechanisms for keeping people connected to the workplace during long absences, such as allowing them to engage in project-based or other non-standard work. Vicki Schultz, *Feminism and Workplace Flexibility*, 42 CONN. L. REV. 1203, 1213-14 (2010).

it will also aid in diversifying workplaces, thus likely improving the output, thereby potentially increasing profitability for a macroeconomic effect.

A. Back to Formality – to Get to Flexibility

This paper suggests that businesses can ultimately achieve flexibility through formality, i.e. by adopting streamlined procedures to request leaves and to organize work shifts. Such streamlined procedures may comprise sufficient advance notice before an employee takes a leave, or, for emergency situations, having replacement, or “jeopardy,” workers to fill in. A block schedule, for example, could work in a small firm or business. Block schedules already work well in booking operating rooms for surgeries and could be implemented in a similar way to break-up jobs within a division in an office. For larger companies, a computerized system may be in place, which should also be easy enough to implement. How exactly business or company management would implement strategies to achieve better flexibility, control, and stability is beyond the scope of this paper, but through such increased formality and flexibility, the work-life, or two-sphere, conflict could be better mastered by employees and provide supervisors and higher executives with greater control.⁹⁸ Therefore, formality would be an inexpensive and effective method to give employees more work-time flexibility.

Flexibility would be a means of adapting workplaces to their employees and creating a symbiotic relationship for optimal productivity within a company. Flexibility can be implemented in four steps. Williams describes the “four crucial steps toward an improved fit”⁹⁹ of the two

⁹⁸ Business management strategies often suggest prioritizing tasks and fitting the most important and urgent tasks into the block schedule, followed by less important ones. Steven R. Covey, A. Roger Merrill & Rebecca R. Merrill use the metaphor of a jar filled with rocks to illustrate the four-quadrant approach to business management through a block schedule. STEVEN R. COVEY, A. ROGER MERRILL & REBECCA R. MERRILL, *FIRST THINGS FIRST* 89 (2003).

⁹⁹ WILLIAMS, *supra* note 10, at 72-74.

aforementioned spheres and thus outlines a work-life reconciliation strategy: "1. Comply with the FMLA and applicable state leave provisions. . . . 2. Create multiple types of leaves for workers with unavoidable work-family conflicts. . . . 3. Create family-responsive overtime systems. . . . 4. Offer reduced hours and flexible work options."¹⁰⁰ These four elements constitute the cornerstones of the rules by which the block schedules suggested above would be enforced. "Employers find that increasing workplace flexibility enhances worker engagement and loyalty"¹⁰¹ and thus flexibility would help boost economic growth.

As explained in Part I, increased work-time flexibility can help working mothers and women to continue to breastfeed. The problem is that breastfeeding mothers face the irreconcilable dilemma of either weaning their babies too early upon returning to work after maternity leave, or of opting-out, both of which take these working women out of the data reported in the work-related statistics. Consequently, there are virtually no statistics about the benefits of work-time flexibility for breastfeeding working mothers. Nonetheless, based on the analysis above, this paper concludes that flexibility would in fact allow working-breastfeeding mothers to not wean too early and not to opt-out, so that they may continue to contribute to the economic output of the companies they work for. For the reason that the statistics available provide information about the role of women and mothers in the workplace, this paper argues that working-breastfeeding mothers, as a subgroup of working mothers and working women, would benefit from increased work-time flexibility in the same manner as their childless colleagues, if not more. Women already greatly affect the economy, so increasing the numbers of breastfeeding-working mothers in the labor market would help boost economic growth even further. Implementing

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 66.

legislation to promote, and even mandate mother-friendlier workplaces would eventually benefit the economy.

*B. Implementing Mother-Friendly Policies
through Womenomics*

Until the legislature acts to mandate more mother-friendly workplaces, public education and business management campaigns could bridge the gap. Whether companies boost their profitability by complying with mother-friendly labor laws or by improving management is ultimately irrelevant. The key is that work-time flexibility for working mothers, and especially for those who are breastfeeding their babies, is an important part of this progress. After all, financial profit propels the motives for new labor laws and regulations. Naturally, “[e]mployers are not social service agencies: they have legal obligations to their shareholders and a business imperative to attend to the bottom line. Yet this does not preclude flexibility because, in many contexts, refusing to be flexible is bad management.”¹⁰² Therefore, female management and the accommodation of female workers can help achieve the goals discussed in this paper.

The correlation between profitability and female employment rates in the most successful companies is an increasingly important trend.¹⁰³ Those companies that were most severely affected by the 2008 financial meltdown seem to have overlooked the enormous resources that were all too obvious: women! According to several studies, companies with higher rates of female employees are more competitive in the market, and those companies that need to boost their balance sheets the most also need to hire women the

¹⁰² *Id.* at 64.

¹⁰³ See generally SHIPMAN & KAY, *supra* note 1, at 1-21 (see footnote 104 for further explanation).

most.¹⁰⁴ Women in business are a powerful, but underutilized, resource of skill and talent to generate profits, which companies should start to appreciate more. If more companies hired and maintained the available female talent, they would become more competitive and profitable.

A British study¹⁰⁵ by the International Centre for Women Leaders from the Cranfield School of Management proved that companies sporting diversity in top management positions “outperform their less diverse competitors.”¹⁰⁶ Notably, the fact that Barclay’s Bank is one of the sponsors of this study helps lead this paper to conclude that the financial industry may be beginning to pay attention to the female professionals’ values for the market. Additionally, the Catalyst study showed that “[c]ompanies that recruit, retain and advance women can tap into an increasingly educated and skilled segment of the talent pool”¹⁰⁷ One of the companies that are benefitting from female executives, for example, is the high-end fashion label Burberry. Correspondingly, the Cranfield School of Management report awarded the “top place of the 2010 ranking [to] Burberry with three out of eight female board members (37.5%). In Burberry both the Chief Executive and the Chief Financial Officer are women, and there is also a female non-executive director.”¹⁰⁸ Using the female workforce better, as *The Economist* suggested in its

¹⁰⁴ See generally *id.* at 2. (A nineteen year study by Pepperdine University of two hundred and fifteen Fortune 500 companies found that “companies with the best records for promoting women outperform[ed] the competition”).

¹⁰⁵ See generally Susan Vinnicombe Obe et al., *The Female FTSE Board Report 2010*, INTERNATIONAL CENTRE FOR WOMEN LEADERS, CRANFIELD SCHOOL OF MANAGEMENT (2010), <http://www.som.cranfield.ac.uk/som/dinamiccontent/research/documents/-FemaleFTSEReport2010.pdf>.

¹⁰⁶ SHIPMAN & KAY, *supra* note 1, at 4 (citing Obe et al., *supra* note 104).

¹⁰⁷ *Id.* at 4 (citing *The Bottom Line: Connecting Corporate Performance and Gender Diversity*, CATALYST 2 (2004), available at <http://www.catalyst.org/publication/82/the-bottom-line-connecting-corporate-performance-and-gender-diversity>).

¹⁰⁸ Obe et al., *supra* note 105, at 8.

November 2011 special report on women in the workforce,¹⁰⁹ is thus a viable and inexpensive method to boost productivity and profitability of a company.

Also, for example, in a nineteen-year survey of 215 Fortune 500 companies, researchers found that “the companies with the very best records of promoting women beat the industry average by 116 percent in terms of equity, 46 percent in terms of revenue, and 41 percent in terms of assets.”¹¹⁰ In their book, *Womenomics*, Shipman and Kay call the results of this study a “little short of revolutionary,”¹¹¹ because companies “with the highest representation of women in senior management positions performed best. They had a higher return on equity and a higher total return to shareholders- higher by more than a third.”¹¹²

What makes women such priceless assets in business are their management skills. Shipman and Kay provide elaborate support for the positive twist women bring to the world of business: women are more likely to engage both brain halves than men, are more likely to make staff members feel good about themselves, quickly form relationships with clients and business partners, calm frustrated employees, and juggle many balls without losing sight of the company’s priorities.¹¹³ In its breakthrough article on womenomics, *The Economist* reported findings from several recent studies that explain female qualities in business: “McKinsey, the most venerable of management consultancies, has published research arguing that women apply five of the nine ‘leadership behaviours’ that lead to corporate success more frequently than men.”¹¹⁴ Shipman

¹⁰⁹ See *Closing the gap*, THE ECONOMIST, Nov. 26, 2011, at 55-57, available at <http://www.economist.com/node/21539928>.

¹¹⁰ SHIPMAN & KAY, *supra* note 1, at 2.

¹¹¹ *Id.*

¹¹² *Id.* at 3.

¹¹³ See *id.* at 9-11, 26-27.

¹¹⁴ *Womenomics*, *supra* note 1, at 48.

and Kay are right: “women . . . are different from men,” in “very useful ways.”¹¹⁵ Therefore, the female-style of management can boost the economy by increasing the competitiveness and profits of businesses. It is time for the business world to acknowledge women’s exceptional skills and to give them a chance to use them. Changing workplaces to render them mother-friendlier would be an ideal way to start and promise significant economic benefits company-wide, market-wide, and on national levels.

The first approach to mother-friendlier work places is to combat the gender bias that gives rise to the problems discussed in Part I. Reorganizing work schedules to “abando[n] the old-fashioned commitment to treating everybody equally, and instead becoming ‘gender adapted’ and ‘gender bilingual’—in touch with the unique management wisdom of their female employees,”¹¹⁶ are laudable initiatives and would ultimately bring the promised benefits of female talent and womenomics to the business world. In order to do so, workplaces must forego gender bias and adapt to the needs of working mothers to create mother-friendlier workplaces.

Those companies which have already implemented gender-bilingual practices¹¹⁷ through education and mother-friendly policies benefit from the talents of their female employees. Calvert, explained that some:

companies . . . understand the business benefits to providing flexibility. Many large companies in the US have come to this understanding and are reaping the benefits of loyal, productive, efficient employees who provide great customer service at a reasonable price – all because of the flexibility provided. Public education campaigns are very helpful. Campaigns focused on educating those who can bring about change in companies would also be helpful – such as focusing on CEOs, CFOs and directors. Educating about the

¹¹⁵ SHIPMAN & KAY, *supra* note 1, at 6.

¹¹⁶ *Womenomics*, *supra* note 1, at 48.

¹¹⁷ *See id.*

successful companies would be very powerful – it would overcome naysayers and also raise some fears of being left behind if one doesn't jump on the bandwagon. And using consumer pressure (letting consumers know which companies are work-life superstars so they can choose where to spend their dollars) would be effective as well.¹¹⁸

Consequently, these mother-friendly companies likely retain higher rates of their female employees because their organization no longer forces working mothers to opt-out.

According to Shipman and Kay, “[t]he cost of replacing professional employees is going up, not down. The total cost of replacing a senior manager can be three times that person’s salary. . . . the cost of turnover for knowledge-based companies is . . . a whopping 500 percent—and those are just the kinds of companies in which professional women tend to work.”¹¹⁹ Companies that eliminate the pressures forcing female employees to opt-out save such turnover costs and may ultimately increase profitability and productivity.

Another way increased work-time flexibility could boost productivity is through improved work atmospheres, where “[e]mployees working flexibly were found to be more committed and more satisfied.”¹²⁰ Shipman and Kay found that in companies that offered flexible work schedules that “[t]he majority of employees said they were less stressed with a schedule they could control and they were more productive,”¹²¹ which also gave those companies a competitive edge.¹²²

Women have the potential to contribute significantly to the recovery from the current recession. The increasing numbers of female university graduates and post-doctoral students will bring “smart, sophisticated businesspeople

¹¹⁸ Interview with Cynthia Calvert, *supra* note 53.

¹¹⁹ SHIPMAN & KAY, *supra* note 1, at 17 (citations omitted).

¹²⁰ *Id.* at 42.

¹²¹ *Id.*

¹²² *Id.*

who are technologically literate, globally astute, and operationally agile”¹²³ into the labor market, and thus “women can compete as well as men.”¹²⁴ Especially where “women are ‘better lateral thinkers than men,’”¹²⁵ women may think of solutions to modern problems that a predominantly male labor force would not think of. Never has this been more important than since the 2008 financial meltdown.

Another factor in womenomics is the enormous spending power of women, which can bring funds back into the market. The more money women earn, the more they will be willing to spend. If women can more actively return funds into the market, it could help to boost the economy on an additional level. This is especially true since “women make perhaps 80% of consumers’ buying decisions—from health care and homes to furniture and food.”¹²⁶ Women boost the economy through the two trillion dollars of purchasing power they make every year in income, a huge part of U.S.’s overall purchasing power.¹²⁷ Gender equality, Shipman and Kay conclude, is thus “a competitive necessity”¹²⁸ because women best respond to other women, who design and sell the consumer goods they want. This also applies to the goods needed for child-care and rearing, such a pacifiers, bottles, clothing, diapers, and toys. If breastfeeding-working women and working mothers earn more, they can also spend more. Adapting workplaces to women’s needs and especially to those of breastfeeding working mothers, gives even more economic power to women reaching deep into the roam of womenomics.

In her analysis of the types of legislation that breastfeeding mothers need, Professor Kolinsky from the

¹²³ *Id.* at 16.

¹²⁴ *See Female Power*, *supra* note 33, at 50.

¹²⁵ *Womenomics*, *supra* note 1, at 48.

¹²⁶ *Women and the world economy*, *supra* note 1, at 73-74.

¹²⁷ *SHIPMAN & KAY*, *supra* note 1, at 12.

¹²⁸ *Id.* at 14.

Barry University Law School in Orlando, Florida, demands that,

[f]ederal legislation should be required to consolidate protections that have originated in the states and private corporations into a comprehensive federal policy that recognizes, values, and encourages a woman's unique ability to breastfeed. Breastfeeding women must be protected from discrimination, and comprehensive federal laws must be enacted to provide meaningful support for all breastfeeding mothers who return to the workplace.¹²⁹

United States Legislators should look to European public policy and directives for inspiration on how to implement what Kolinsky demands.

C. Following a Good Example – European Work-Life Law Directives

European Union member states all have maternity leave policies that allow for greater work-life balance for new mothers than those under United States law.¹³⁰ The Equal Treatment Directive, the Pregnant Workers Directive, the Parental Leave Directive, and the Work-Life Balance Package¹³¹ are all examples of progressive policies and proof for the genuine concern European show for working mothers. The first European breakthrough came in 2000, with the “Council Resolution on the Balanced Participation of Women and Men in Family and Working Life [which] for the first time firmly placed the public and private spheres on an equal footing.”¹³² This is the type of breakthrough legislation that the U.S. also needs. The resolution “held that: ‘Both men and women, without discrimination on the grounds of sex, have a right to reconcile family and working life.’”¹³³ Similarly, the

¹²⁹ Kolinsky, *supra* note 85, at 334.

¹³⁰ Torella, *supra* note 5, at 60.

¹³¹ *Id.*

¹³² *Id.* at 56-57.

¹³³ *Id.*

Charter of Fundamental Rights explicitly demanded work-family reconciliation, which has become binding upon its incorporation into the Lisbon Treaty.¹³⁴ It makes for a good role model for potential amendments to the FMLA in the United States because it acknowledges the importance of the right to breastfeed,¹³⁵ and provides guidelines to adapt workplace policies accordingly to these needs.¹³⁶

As a means of implementing the aforementioned charter, several European Unions' member states are adopting flexible work schedules. For example, "Austria, the Czech Republic, Finland and Hungary provide up to three years of paid leave for mothers."¹³⁷ In addition, "[m]ore than 90% of companies in Germany and Sweden allow flexible working."¹³⁸ Proof of the economic viability of these approaches are the AAA ratings that these countries maintained throughout the recession.¹³⁹ The reason why these public policy solutions can be implemented successfully in Europe is that businesses are embracing flexible work schedules. They are "learning to divide the working week in new ways—judging staff on annual rather than weekly hours, allowing them to work nine days a fortnight, letting them come in early or late and allowing husbands and wives to share jobs."¹⁴⁰ All Americans have to do is learn from the Europeans and apply the same principles nationally. If American companies adopted some of these strategies, they would most likely reap similar successes as their European colleagues already have.

¹³⁴ *Id.* at 57.

¹³⁵ Benjamin Mason Meier & Miriam Labbok, *From the Bottle to the Grave: Realizing A Human Right to Breastfeeding Through Global Health Policy*, 60 CASE W. RES. L. REV. 1073, 1115 (2010).

¹³⁶ *See id.* at 1124-42.

¹³⁷ *Female Power*, *supra* note 33, at 51.

¹³⁸ *Id.*

¹³⁹ *Germany's economic model: What Germany offers the world*, THE ECONOMIST, Apr. 14, 2012, at 29, available at <http://www.economist.com/node/21552567>.

¹⁴⁰ *Female Power*, *supra* note 33, at 51.

Increased work-time flexibility is not only a viable strategy for the European Union, but also for the United States.

Williams, however, predicts that the types of policies featured in the European Union are “unthinkable” in the United States because “American politics [are] fueled by class conflict between the professional-managerial class and the white working class.”¹⁴¹ The caveat Williams documents is that measures to reconcile work and family “will remain politically unattainable unless and until progressives can reconstruct the kind of viable, long-term coalition that has been missing for nearly forty years.”¹⁴² She explains that this change would require work-family commentators to shift away “from the single-minded focus on gender traditionally [].”¹⁴³

Professor Torella, a European work-life law expert from the School of Law at the University of Leicester, explains that the three pillars of reconciliation policy are: leave, time, and care.¹⁴⁴ In one of her essays, she points out that even the most recent and progressive European policies to reconcile work-life balance, such as the European Union Commission’s Work-Life Balance Package of 2008,¹⁴⁵ “go to the very heart of how a country decides to organize its resources and welfare provision, which model of female employment (full time or part time) and family organization (traditional or not) to support [and] whether to promote caregiving activities as a woman’s task”¹⁴⁶ She continues to explain that the separation of work and family issues into two spheres, namely the public and the private, determines the position of individuals in society and that

¹⁴¹ WILLIAMS, *supra* note 10, at 6.

¹⁴² *Id.* at 9.

¹⁴³ *Id.*

¹⁴⁴ Torella, *supra* note 5, at 59 (citations omitted).

¹⁴⁵ See *Towards a better work-life balance*, EUROPEAN COMMISSION (Nov. 14, 2008), <http://ec.europa.eu/social/main.jsp?catId=370&langId=en&featuresId=27&furtherFeatures=yes>.

¹⁴⁶ Torella, *supra* note 5, at 52 (citations omitted).

their separation denies their interdependence.¹⁴⁷ If any similar strategies are to be successful in the United States, they would have to follow the same principles and rest on the same three pillars. Nonetheless, Torella warns that “[t]he boundaries between the two spheres, however, are not fixed but a mere social construction.”¹⁴⁸ This observation is directly in line with Williams’ criticism of the media’s lack of truthful and comprehensive coverage of women’s opting-out stories and the need to draw political attention to it.¹⁴⁹

Williams’ observations concerning the need to bring work-life balance to the center of political discussion is directly in line with Calvert’s suggestion to use public education campaigns to achieve the goals set out in this paper.¹⁵⁰ The private sphere is unregulated in the United States because it is considered a private issue.¹⁵¹ That is part of the problem. Where the two spheres overlap, regulation of one without the other will not succeed. A more invasive approach is needed. Voters’ interest should be sparked concerning this issue, and they must receive the education about the rudimentary protection of working and lactating mothers under American law. Changing voter’s outlook will ultimately provide the necessary support to implement family-friendlier legislation that will allow working-breastfeeding mothers to contribute to the labor market uninhibitedly.¹⁵²

CONCLUSION

Using the principles of womenomics for nursing growth ultimately remains a viable solution for the current recession and could cure many of the public health concerns in the United States. By allowing working-breastfeeding

¹⁴⁷ *Id.* at 54 (citations omitted).

¹⁴⁸ *Id.*

¹⁴⁹ WILLIAMS, *supra* note 10, at 1-3, 14, 27-28.

¹⁵⁰ Compare Calvert, *supra* note 53 (interview on file with author).

¹⁵¹ WILLIAMS, *supra* note 10, at 7.

¹⁵² *Id.* at 1.

mothers to bring the private and public spheres closer together, and to thereby attain greater work-life balance, businesses and companies will be empowered to increase efficiency, productivity, and eventually profitability. If more working mothers were able to breastfeed their babies for the recommended six months,¹⁵³ the government could save public health care costs, and use these savings for reinvestments to fuel economic recovery.

The prerequisites for these positive outcomes are a reduction in gender bias at the workplace and increased work-time flexibility. Conversely, the goals of the workplace adaptations to breastfeeding-working mothers would mean that these mothers' productivity and abilities as employees could remain unencumbered by the obstacles created through such gender bias. The Maternal Wall and the Mommy Wage-Gap, family-hostile public policies, and insufficiencies in the FMLA and PPACA protections granted to breastfeeding-working mothers currently stifle such adaptations and legislature should step in. European work-life law directives and policies help illustrate for American workplaces and Congress how these changes could be made. Empirical data conclusively show that increasing workplace flexibility truly boosts profitability, and ultimately helps to stabilize the national economy.¹⁵⁴ It is time to take proactive measures to adapt workplaces to breastfeeding-working mothers, and more generally, working parents, so that they may achieve greater work-life balance and help the businesses and companies they work for to become vital parts of an economic recovery.

¹⁵³ See *Nutrition: Exclusive breastfeeding*, *supra* note 3.

¹⁵⁴ *Female Power*, *supra* note 33.

